

Remarks - General

By the above amendment, Applicant has amended the title to distinguish the novelty of the invention from other inventions in the above divisional application.

Applicant has also changed the specification to record the prior art cited by the Office Action into the specification, for a more complete disclosure.

Also Applicant has rewritten all claims to clarify the language of the claims for overcoming the rejection under 35 U.S.C. 112, first paragraph, for being based on a non-enabling disclosure, and also for overcoming the rejections under Sections 35 U.S.C 102(b) and 35 U.S.C 103(a).

The Objection To The Claims Under Section 35 U.S.C 112 has been remedied.

Claims 76-81, 89, 90, 94, and 96 were rejected under 36 U.S.C 112, first paragraph for being based on a non-enabling disclosure.

With respect to claim 76, claim 76 was rejected since it was not seen that the specification supports one or more of elements a through m as well as having particulate matter and be homogenous.

As a means to correct claim 76, a dependent claim, Applicant has rewritten all claims, including independent claim 72, now newly written as claim 99, to clarify the construction of the composite candy support and to clarify the dependent claims. Applicant has rewritten claim 76, now as new claims 101, 102, and 103, to clarify claim 76 and to distinctly reflect the construction of the support as written in the specification.

Applicant has changed and clarified the language of independent claim 72, now newly written claim 99 from:

"a substantially composite edible support suitable for supporting said comestible..., " to

"a composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, said two discernable edible members each being other than an edible coating,..."

Applicant has corrected the language of claim 72 as new claim 99 to clarify the meaning and the composition of the composite candy

support (comprising two discernable edible members), which is the language used in the specification. Page 34, ll. 19 to 21 of applicant's specification, discloses a composite support, "as seen in support 62 in Fig. 1 above, that has discernable individual ingredients." As now stated, this is novel structure having new results which clearly distinguishes applicant's composite candy support over the prior art, under Sections 102(b) and 103(a). Applicant's composite support comprises a first member of candy (which may be a *homogenous* candy, such as caramel). The caramel may be paired with nuts, a second member. The nuts together with the caramel would be a composite candy support.

Regarding Claim 77, now new claims 108 and 137, recite, "further including a lollipop placed on said composite candy support within said frozen supported comestible for a triple treat for a child,..." The language, "lollipop configuration," in claim 77 has been changed to, "lollipop placed on said composite candy support within said frozen supported comestible," in claims 108 and 137, which is the language used in the specification. Page 33, ll. 8 to 13 of applicants specification clearly recites, "The inserted portion of stick 62A has been topped with or dipped into an additional fun ingredient 100, 108, such as fudge, chocolate, or toffee, (gum or any confection). This provides a lollipop within a frozen confection for a child." Also p. 43, l. 12, recites, "This creates a lollipop within an ice pop that is

totally edible." In addition, p. 47, ll. 13 to 15, recites, "Additional fun ingredient 100 provides a lollipop-type confection inside confection 84 for a triple treat." The reference to the formation of the lollipop within the frozen confection is clearly noted in three separate places in the specification (above) and is especially shown in Drawing Fig. 2 and discussed, as well as in Figs. 7, 13A, and 13B. This change in the claim language and the clearly worded description previously found in the specification along with their respective drawing figures, clarifies that the invention includes a lollipop of candy, gum, (p. 11, #100), cookie (Fig. 7, p. 43, ll. 13 to 15), or other confection attached to the edible support inside the frozen confection for the consumer to enjoy as a "lollipop within a frozen confection" as she, or he progresses eating through the supported frozen confection.

Regarding claim 78, claim 78 which recites, " an ingredient of a manufacturer..." has been canceled.

Regarding claims 79 and 89, now new claims 112 and 123 respectively, have been rewritten to specify what "means for inhibiting the breakage of the edible support" involves, using the language of the specification.

Regarding claims 80, 90, 94 and 96, which recited, "means for providing a supported comestible designed for a child.," have all

been canceled.

Regarding claim 81 which recited, "further including a moisture-proof barrier coating on said comestible and said edible support," has been rewritten as new claim 113. New claim 113 has been amended to clearly show the alternative expressions of the moisture proof barrier coating.

The Objection To The Claims Rejection Under Section 35 U.S.C 102(b) as being anticipated by Ref. N (Swiss 649197) has been overcome.

Claims 72-76, 87, 88, 91, 92, 95, and 98 have been rejected under 35 U.S.C. 102(b) as being anticipated by Ref. N (Swiss 649197) Gabriel Van Deuren (1978).

Regarding applicant's claim 72 under 35 U.S.C. 102(b) as being anticipated by Ref. N.:, Claim 72, now rewritten as new claim 99 recites, "a composite candy support comprising two discernable edible members in contact with each other suitable for supporting said frozen comestible, said two discernable edible members each being other than an edible coating,..."

Ref. N (Swiss 649197), discloses a support stick for ice cream that comprises an edible sheath filled with a filling.

The second paragraph of the partial translation of (Swiss patent 649197) reads: "The compsn. of the sheath is 21-23 (pref. 22.22) kg granulated sugar, 6.5-8.5 (pref. 7.78) kg water, 20-24 (pref. 22.22) kg glucose (esp. 17.78 kg dry matter), 10.5-12.5 (pref. 11.78) kg modified starch (esp. 10.22 kg dry matter), 9.5-10.5 (pref. 10) kg water, 42-46 (pref. 44.44) kg biscuit flour (esp. 39.11) kg dry matter), 7.6-8.5 (pref. 8) kg coconut oil (esp. 5.27) kg dry matter), 0.4-0.5 (pref. 0.44) kg salt, 0.06-0.09 (pref. 0.0755) kg dye, and 55-70 (pref. 63) kg flavourings."

The first paragraph of the partial translation of (Swiss patent 649197) Ref. N, reads: "The stuffing is a compsn. contg. 17-19 (pref. 18) kg glucose (esp. 15.3 kg dry matter), 66-74 (pref. 70) kg icing sugar, 6-8 (pref. 7) kg granulated sugar, 0.75-0.85 (pref. 0.8) kg food gelatin (esp. 0.72 kg dry matter), 1.1-1.3 (pref. 1.2) kg water, 2.5-3.5 (pref. 3) kg cocoanut oil (esp. 2.01 kg dry matter), and 0.15-0.35 kg/100 kg of colourings and flavourings."

Ref. N (Swiss 649197) does not comprise candy and is not a candy support.

Van Deuren's sheath ingredients and in particular, the per portion, or ratio of sheath ingredients, especially kgs of biscuit flour (translated as "cookie" flour) to that of sugar, and of shortening, is indicative of a cookie recipe, i.e. "(42-46

(pref. 44.44) kg biscuit flour (esp. 39.11) kg dry matter): 21-23 (pref. 22.22) kg granulated sugar, : 7.6-8.5 (pref. 8) kg coconut oil (esp. 5.27) kg dry matter)." The cookie flour is twice (2X) the amount of the granulated sugar and five and a half times (5.5X) the amount of shortening. In addition, if you were to add all the sugar, i.e. the dry matter kg glucose (20-24 (pref. 22.22) (esp. 17.78 kg dry matter) to the granulated sugar (pref. 22.22), (dry matter glucose (pref. 22.22) + granulated sugar (pref. 22.22) = (pref. sugar kg 44.44). The cookie flour kg (pref. 44.44) is equal to the sugar (sugar kg 44.44).

Such a recipe, having a large concentration of flour in relation to sugar, (equal amounts in this case) is indicative of a cookie recipe, and not a candy recipe. Since the cookie is a sheath, Ref. N is a hollow cookie, filled with a filling.

For example, The U.S. Patent and Trademark issued patents of 4,965,076, (1990) and 4,965,077 (1990) to Martin, et al., are just two of numerous examples of patents illustrating that such large amounts of flour are used in making cookies. In Patent 4,965,076, listed under "Outer First Dough Ingredients," the combined weighted percentage of sugar including: Sucrose granulated = 32.0 + sucrose granulated = 2.4 + fructose, crystalline = 0.4 is 34.8. Flour is 38.5. The ratio of flour to sugar is 38.5 : 34.8, nearly equal amounts of flour and sugar.

In patent 4,965,077 to Martin et al., Martin et al. combines flour in the amount of 36.7, to sucrose, granulated in the amount of 33.4. The ratio of flour to sugar is: 36.7 : 33.4, nearly equal amounts of flour to sugar. Again, there is a large amount of flour in the ingredients, which is found in the manufacturing of cookies, not candy.

In addition, patents 4,965,076, and 4,965,077 to Martin, et al. are licensed to the Keebler Company (Elmhurst, Ill.) The Keebler Company is a time honored, well known, leading cookie manufacturer in the United States. They are well known for their successful manufacture of delicious cookies, not candy.

Van Deuren's sheath is a rolled cookie filled with a gelatin and custard type filling. Rolled or tubular cookies, such as Ref. N, are typically quite thin,) to facilitate rolling (and would have to be to fit inside a frozen supported confection, [Ref. N teaches 8.5mm to 9.5mm, or less, as the diameter of the support after rolling]). These rolled cookies are made by pouring a scant amount of cookie batter in a flat or shallow waffle textured mold, or iron (often circular) and baked. Sometimes in lieu of such a large flat shape, a ribbon of batter for wrapping around a rod for a tubular shape is used. When the cookies are sufficiently cooked, they are taken out while still warm, and then rolled around the rod until cooled, (or baked on the rod). This tubular cookie is then slid off the rod and filled with a

filling comprising gelatin, sugar, and shortening, etc., such as demonstrated by Van Deuren's "filling" recipe, above. This tubular biscuit, or cookie, is, or is akin to a cookie, or light pastry, one version of which is called a "Pirouette," a trademark of Pepperidge Farm, Inc. of Norwalk, Ct. (Trademark Registration Number 2409791 - 1966) for these cookies. Pirouettes are commonly used as a garnish with ice cream for entertaining and are often lightly inserted into a scoop of softened ice cream for presentation to the consumer, before its consumption. Pirouettes are sold in the United States, for example, by Pepperidge Farm (above), a cookie company, sold in A&P, the Great Atlantic and Pacific Tea Company, and distributed by Compass Foods of Montvale, NJ in a tall, sealed upright tin. This tin currently has a picture of two Pirouette cookies used as a garnish with ice cream on the tin's side.

Candy, in and of itself, is not made with a significant amount of cookie or biscuit flour, if it has any flour at all. Merriam-Webster's Dictionary © 1994, defines "candy" as "1. a crystalized sugar made by boiling and evaporating cane sugar, sirup, etc., 2. A solid confection of sugar or sirup, flavored, colored, and often enriched with nuts or fruits."

Although Van Deuren's stick support, has sugar, as does a cake, his support does not comprise candy, as an ingredient (according to Merriam-Webster's Intermediate Dictionary, above), and

therefore is not a candy support. It also does not at least have candy being one of two discernable edible support members and therefore, Van Deuren's stick is not a composite candy support. Therefore, Van Deuran's support does not anticipate applicant's composite candy support.

In addition, since Van Deuren's support is a cookie support, Ref. N (Swiss 649417) does not anticipate applicant's composite candy support for supporting a frozen confection under 35 U.S.C 102(b) because a composite candy support for the support of a frozen comestible is a patently distinct species from that of Ref. N, which is not seen in any other prior art. For further documentation of this conclusion, please see United States PTO Office Action to applicant (above), dated 5/2/2002, regarding this application 09/641,410 (above) which states that, "candy bar supports IV [a]) and cookie bar supports (IV [b])" are *patently distinct species* and applicant must elect a single species.

The new wording of applicant's independent claims clearly recites novel structure that physically distinguishes over prior art Ref. N. This language distinguishes over Ref. N under Section 35 U.S.C 102(b) because Ref. N does not comprise candy. Applicant's new composite candy construction of a support for a frozen confection is also submitted to be of patentable merit under Section 103(a) because these newly paired stronger ingredients affords a more dependable and durable support than ever before. This new support

can withstand the rigors of shipping and the handling by children, has a markedly increased taste over Ref. N., has been tested (by applicant) to literally have a frozen shelf life of years (if truly desired), and may be impervious to moisture, with, or without an edible moisture proof coating. This new composite candy supported comestible is truly a novel treat for a consumer, which a consumer can count on time after time.

Applicant requests reconsideration of the Section 102(b) objection.

Applicant therefore requests reconsideration of this Section 102(b) objection in light of newly written independent claims 99, 119, 125, and 130, and ensuing dependent claims, which have been rewritten to define patentably over Ref. N, all the references, and all combinations thereof.

With regard to claim 74, claim 74 has been canceled.

With regard to claim 76, in remedying claim 76, independent claim 72 has been rewritten as new independent claim 99 to clarify the construction of the composite candy support. Dependent claim 76, thereafter, has been clarified, separated into three separate dependent claims, and rewritten as new dependent claims 100 through 103. Ref. N does not anticipate applicant's composite

candy support having two edible members in contact with each other, where at least one of the two members is candy. Ref. N does not comprise candy, (above). Additionally, as in new claims 101-103, formerly claim 76, Ref. N does not comprise candy plus the addition of another candy (claim 101), or comprise candy plus the addition of edible particulate matter (claim 102), or comprise candy, plus the addition of a comestible that is substantially other than candy (claim 103).

With regard to method claim 95, claim 95 has been rewritten as new claim 130. Ref. N discloses the replacement of a conventional wooden or plastic stick with a tubular cookie with a gelatin filling. Ref. N does not disclose a method of replacing a conventional wooden, or plastic stick with a composite candy support. Ref. N is a hollow cookie. It does not comprise candy and does not anticipate applicant's composite candy support, which comprises novel and unexpected results of a markedly stronger, dependable support, having a plurality of candy tastes, and methods of consuming it without a mess to the consumer.

In addition, relating to applicants method claim 95, the Office Action states, "since Ref. N discloses the composite edible sticks replace the conventional wooden sticks, Ref. N inherently teaches adding the stick to the comestible before freezing which is how the wooden sticks are added to the confection [since after freezing, the addition of the stick would be difficult or

impossible]." Ref. D of the above Office Action, patent 2,217,700 to Musher, p. 4, Col. 2, ll. 25 to 42 (Example II) states, "...Then after it is dried, a hole is made within the unit piece and the stick is inserted....after which the stick will be held in a very firm position." Prior art, Ref. D, teaches that support sticks are sometimes added after the ice cream has solidified, which is not "difficult or impossible." With regard to method claim 95, now new claim 132, Ref. N does not comprise candy, and does not insert a composite candy support into a supported confection, whether frozen, or non-frozen at the time, as a means to create a frozen composite candy supported confection. Therefore, Ref. N does not anticipate applicant's new method claim 132.

Therefore, applicant submits that the new language of newly rewritten independent claims 99, 119, 125, and 132 and all ensuing dependent claims distinguishes over Ref. N. under Section 102(b) for all of the above reasons.

These distinctions also comprise new results which are submitted by applicant to be of patentable merit under Section 103 (above) for the following reasons: Applicants composite candy support has the novel distinct structure of "two discernable edible members," or "two edible members," (claims 125 and 132) where at least one of the two edible members is candy that supports a frozen comestible. Applicant's support further comprises a moisture

sealing coating to prevent from the support from absorbing moisture from the supported confection, unlike Ref. N, which is an unprotected, thin, fragile hollow cookie, which does not have a strong ingredient with it, such as caramel. A composite support that has one member being candy paired with another comestible, is a very strong support, which is dependable and reliable over a long period of time.

My composite candy support is able to be made in any form, large or small, while still preventing breaking, during shipping and consumption and offers a more complex candy taste. It also delights a child with its myriad of possible designs, unlike Ref. N that has only one configuration. Its construction is markedly stronger, yet safe, for a consumer. Its construction is more dependable after freezing than a simple melted sugar stick, hollow or solid, of the prior art, that is prone to cracking in half like a dropped glass rod. It's construction comprises caramel or other resilient, or "chewy" candy that has a "give," or a bit of flexibility to it. This minimizes breaking and provides a distinctly more dependable candy support for a supported confection that needs to be frozen, handled and shipped. Such a dependable edible support is a long felt but unsolved need for supplying a totally edible supported frozen confection.

These distinctions are submitted to be of patentable merit (as

above) under Section 103. Providing resilient candy in a support combined with strengthening comestibles, such as nuts, fruit and choices of innumerable types of candy affords a consumer a practical, dependable, utilitarian support with desired tastes that have never been combined before. In their own right, composite candy bars and ice cream each have successfully demonstrated through the years (above), that each are a exceedingly desired taste of the U.S. consumer, and have weathered the test of time. To make available these two desired long lasting tastes in a single serving, which can be dependably and safely supported for consumption, comprises new and desired results stemming from this novel structure, and strong ingredients.

My composite candy support takes an already proven favorite of a consumer, such as the #1 Snickers Bar for a great many years (please see summary below), and makes a product (supported frozen confection) totally better, not frustrating, or uncertain. A consumer may enjoy a supported confection for a much longer time as opposed to a small amount of fast melting ice cream on a wooden stick eaten hastily. Applicants composite candy support is frozen deeply from within and keeps the supported ice cream colder and from melting quickly, which is most advantageous for a longer, non hurried enjoyment of a supported frozen confection. Providing a frozen confection with a dependable long lasting edible composite candy support, that can be effectively used for

years to come, comprises superior, dependable, non-obvious results over Ref. N and the prior art.

Remaining claims 73, 75, 87, 88, 91, 92 and 98, rejected under 35 USC, 102(b) as being anticipated by Ref. N have been Overcome

With regard to claim 73, claim 73 which recited "wherein said comestible comprising a body of an edible substance is substantially frozen," is canceled.

With regard to claims 75 and 98, claim 75, now new claim 106 and claim 98 rewritten as claim 131, which now both recite, "The method of providing a supported frozen comestible of claim 130, further including a sufficient surface area on said second portion so that a person can hold said composite candy support and said frozen comestible with a hand, said sufficient surface area further includes supplying two handles to said person, one for each hand." New claims 106 and 131 are no longer anticipated by Ref. N, since Ref. N does not comprise candy and does not anticipate a composite candy support, including sufficient surface area on said second portion so that a person can hold said composite candy support and said frozen comestible with a hand. Claims 75 and 98, now claims 106 and 131, respectively, are inherently not anticipated by Ref. N since claim 72, now new claim 99 is no longer anticipated by Ref. N.

With regard to claim 87, claim 87 has been rewritten as claim 119 which now recites, "A *composite candy* support suitable for use in supporting a subsequently frozen comestible ... comprising two discernable edible members in contact with each other, said two discernable edible members each being other than a candy coating,..." Ref. N does not anticipate new claim 119, as Ref. N does not comprise candy, nor is it a composite candy support with two discernable edible members.

With regard to claim 88, claim 88 which read, "wherein said edible support comprises a substantially non-malleable support." has been canceled.

With regard to claim 91, claim 91 has been rewritten as new claim 125, which now recites, " a composite candy support comprising two edible members in contact with each other suitable for supporting said frozen comestible, said two edible members each being other than a candy coating,..." Ref. N does not comprise candy and does not comprise a composite candy support for supporting a frozen comestible, and therefore does not anticipate applicants new claim 125 under Section 102(b).

With regard to claim 92, claim 92 which read, "wherein said edible support comprises a substantially non-malleable support." has been canceled.

The Objection To The Claims 76-79, 86, 93, and 97 Rejection Under Section 35 U.S.C 103(a) as being unpatentable over Ref. N in view of Musher (2,217,700), has been overcome.

Under 35 U.S.C. 103(a), the references themselves (or other prior art) must suggest that the references be combined. The new language of independent claims 99, 119, 125, and 130 distinguishes over Ref. N (Swiss 649417) because Ref. N, is a hollow biscuit, or hollow cookie support filled with a gelatin filling. Applicant claims a composite candy support. Applicant's support is a distinctly patentable species from that of Ref. N (above). The Ref. N support does not comprise candy, is not a composite candy support, and does not anticipate applicant's composite candy support for supporting a frozen comestible.

The distinction of applicant's composite candy support is submitted to be of patentable merit under Section 102(b) over Ref. N.. Ref. N thus would not be combined with other prior art for use in a Section 103(a) prior art rejection.

Applicant therefore respectfully requests reconsideration of this Section 103(a) objection in light of newly rewritten independent claims 99, 119, 125, and 130, and ensuing dependent claims, which have been clarified and rewritten to define patentably over Ref. N, and all combinations thereof. Applicant's dependent claims, which

incorporate all the limitations of the parent claims, are patentable for the above reasons of applicant's independent claims. Also applicant's dependent claims are even more patentable because they add additional limitations to the parent, or independent claim, such as adding a moisture proof barrier to the composite candy support, or a lollipop on the composite candy stick within the ice or ice cream, or a flat surface for a free standing supported confection, or a plurality of supports in a single confection, for sharing.

In addition, regarding claim 76, Musher, Ref. D, adds candy and particulate matter atop the stick, dispersed within the frozen confection, for anchoring the ice cream to the stick, (and to add flavor with the candy). Musher's support, if used as an edible stick, is "hard candy or made of sugar, or of a crisp, baked product." The particulate matter dispersed within the ice cream and the candy atop the stick has nothing to do with the makeup of the stick. Musher uses the particulate matter as a means to permeate the ice cream and attach it to the outside of the support, to prevent the ice cream from prematurely falling off the stick during consumption. It would not have been obvious, or suggested to modify Ref. N in the manner proposed, which is to include the particulate matter within the stick. It would be necessary to make modifications, not taught in the prior art, in order to combine the references in the manner suggested. Musher therefore cannot be relied upon to teach the conventionality of

an edible composite support. Applicant's claim 76 has been clarified, and separated into three separate dependent claims. These new claims have been rewritten as new dependent claims 101, 102 and 103. This new language, together with independent claim 99, specifies that applicant's composite candy support comprises two members.

In addition, regarding claim 77, as newly written claims 108, and 135 now recite, "further including a lollipop placed on said composite candy support within said frozen supported comestible..." Firmin's patent, Ref. A, additional confection is an edible coating for the purpose of: "the candy stick will be kept from melting," not a lollipop. His invention, (nearly ten years prior to Musher's patent who added candy atop the stick) does not comprise a lollipop, nor would it be suggested to modify Ref. N. in view of Firmin, who does not have a lollipop, to create a lollipop atop a hollow cookie support to make a composite candy support.

In addition, regarding claim 78, claim 78, including the phrase "ingredient of a manufacturer," has been canceled.

In addition, regarding claim 93, that recited, "said confection includes a confection substitute," has been canceled.

In addition, regarding claims 79 and 89 being rejected under 35

USC 103(a), rewritten as claims 112 and 123, which now recite, "means for inhibiting the breakage of said edible support," Barricini teaches of a polyethylene stick used to support a non-frozen confection, such as a lollipop, which has a tapered reinforcement for the upper end of the stick. Applicant's means for inhibiting the breakage of the support includes, for example, using strong edible ingredients running in a plurality of directions for strength, within the support, using specific combinations and multi-layers of ingredients for making the support stronger, providing a plurality of different ingredients running concentrically, parallel, or maneuvered within the stick, for strength, means for monitoring the amounts of moisture, shortening, sugar, air, air bubbles in said ingredients, means for providing a suitable size and shape to support the frozen comestible, and adding supportive mess guards around the outside of the support. These methods are entirely different from Barricini and work very differently for very different reasons and materials, since his support was inedible and applicant's support is edible. More importantly, Ref. N is not applicable for a Section 103 rejection in view of Barricini.

Regarding claims 80, 90, 94 and 96 for being rejected under 35 USC 103(a) as being unpatentable over Ref. N in view of Gaul M, reciting, "further including means for providing a supported comestible designed for a child." Claims 80, 90, 94 and 96 have been canceled.

In addition, regarding claim 81, rewritten as new claim 122 (also claims 129 and 136), as being unpatentable over Ref. N in view of Firmin and Jones, and which recites, "further including a moisture proof barrier on said comestible an said edible support," both Firmin and Jones add an edible barrier for preventing melting of the stick and for adhesion to the stick respectively, however, neither Firmin or Jones adds the edible barrier to enhance a composite candy support. Nor is it suggested, or obvious, to add an edible barrier to Ref. N. in order to construct a composite candy support for a frozen comestible.

Regarding claims 82, claim 82 rewritten as new claim 114, Ref. Q, Swiss Patent 647,394 (1985) to AuJourdhui provides a mess guard for a pastry. AuJourdhui's pastry is not a supported comestible. There is nothing in the prior art to suggest that his mess guard be combined with Ref. N, a hollow, unprotected cookie, to provide a composite candy support with a mess guard, for supporting a frozen comestible.

Regarding claim 83, now newly written claim 115, which recites, "further including a protective drip guard on said supported frozen comestible for catching melting portions of said supported frozen comestible for preventing a mess on fingers and clothing, said protective drip guard further comprises an edible drip guard." Ref. H, Patent 2,632,708 (1951) to Sueskind, shows a cup

of an edible material for catching melted drippings of a frozen confection. Ref. K, Patent 1,835,719 (1924) to Parr shows a cone-type edible bowl with ribs with a protruding stick for retaining ice cream. To modify Ref. N in view of Sueskind and Parr in the manner proposed, which is to include a drip guard to Ref. N's unprotected, hollow cookie support does not anticipate applicants support, with a drip guard, which is a composite candy support.

Relating to claim 84, claim 84, as new claim 116, recites, "...further including a plurality of differing frozen comestibles supported on said composite candy support..." Ref. CC, Patent 2,464,515 (1949) to Kennedy shows a separated confection on a support stick. Combining Ref. N, a hollow cookie support, with Kennedy, i.e. putting differing supported confections on a cookie support does not anticipate applicant's composite candy support having differing supported comestibles or confections.

Relating to claim 85, as newly written claim 104, recites, "...further including a free standing base on said supported frozen comestible for providing a free standing supported frozen comestible." Ref. F, Patent 6,054,158, (2000) to Hart et al. was issued in 2000. Applicant requests that this patent be removed as a prior art reference since it is dated after applicant's Disclosure Documents dated 1994, 1996, and 1999, showing a working model having a flat surface for a freestanding frozen

comestible with a composite candy support. In addition, Ref. N should not be combined in view of Hart for a Section 103(a) prior art rejection, since Ref. N does not anticipate applicants' candy composite for supporting a frozen comestible.

Non-Applied References:

Patent 198, 282 (1923) to Armstrong shows a hollow wood, or single candy tube for a lollipop. He does not have, or envision a composite candy support for supporting a frozen comestible.

Patent 1,718,997 to Burt, (1922) comprises a frozen supported confection with a candy head on a wooden stick. Although, Burt's candy stick has an "candy head on the end thereof" he does not mount it on a novel composite candy support.

Patent 1,747,112 to Good (1930) comprises a frozen confection having an "ice cream holder ... which will provide a receptacle in the handle portion of the holder in which any liquid may collect...." Good's edible support is comprised of cake or a thin wafer-like form of cake and is hollow to catch melting portions. This hollow support is made for the purpose of eating the frozen confection without getting messy. This support does not comprise candy, is a single element, and is not a composite candy support.

Patent 1,895,697 to York (1933) notes the "handle is preferably

made of wood with pointed or rounded end... or may be formed of hard candy or other material." This support, if used as candy, is a single member hard candy support, most likely made of melted and flavored sugar. It is not a composite candy support having two discernable members, other than a coating.

Patent 1,939,450 to Horton (1933) recites, "the stick 7 may be made from wood, stick candy or any other desired material." Horton's stick is a single candy member and does not contemplate, or teach of a composite candy support having two discernable members, other than a coating.

Patent 2,167,353 (1938) to Frediani teaches of an edible coated cup for holding a confection. He does not use or contemplate using a composite candy support for supporting a frozen comestible.

Patent 2,570,031 (1951) to Gibson provides a plurality of supported frozen confections, however, Gibson does not provide an edible stick, or a composite edible candy support.

Patent 3,274,958 (1963) to Otken and 2,123,215 (1935) to Thomas, may show a plurality of supported confections on a wooden stick, but Otken does not solve the problem of providing a safer, more delicious, and dependable edible support, such as a composite candy support.

In patent 4,399,153 to Tezuka et al. (1983), see page 5 of applicant's specification. Tezuka has a single member chewing gum support. This support is not a composite candy support having two edible discernable members, other than a coating.

Patent 6,177,110 (2001), to Chan was issued in 2001. This patent is dated after applicant's Disclosure Documents dated 1994, 1996 and 1999, showing the working prototype of a composite candy support, and should not be used as prior art against applicant. It also is dated after the filing of applicants application for the above, on 8/18/2000. Applicant respectfully requests that patent 6,177,110 (2001) to Chan be removed as a prior art reference. In addition, Chan does not teach of a composite candy support for supporting a frozen confection or comestible.

Summary

Applicant respectfully submits that the claims now define over the prior art under Section 102, and the claimed distinctions are of patentable merit under Section 103 because of the above new results.

For furthering the reasons and new results listed above, for example, the Milky Way Bar was first introduced by **Mars**, Incorporated of Hackettstown, New Jersey in 1923. The "Snickers" Candy Bar (a composite candy bar having candy nougat and nuts,

named after the Mar's family's favorite horse) was first introduced in 1930 and is today's "Number 1" most popular candy bar (as of 2003). (See www.mars.com) Patent 1,618,324 to Burt was issued in July 2, 1929, for a candy stick support. According to prior art, it has never been suggested to use a composite candy bar as a support for a frozen comestible, such as using a Milky Way Bar to support an ice cream, or frozen confection.

Since the Milky Way's Bar introduction in 1923, until the time of applicants filing in the year 2000, a time of seventy seven years, such a composite candy bar has never been used to support a frozen confection, or any confection. Since the composite candy bar has been around for eighty years (at the time of this writing), and widely available to the public in the United States, and ice cream pops on wooden supports have been available for that much time and longer, such as patent 1,618,324 (original application filed in January 1922) to Burt, also widely available to the public, the use of a composite candy bar, or support, to support ice cream, or another frozen confection has never been used and is not obvious. Even supported frozen confection manufacturers, those familiar with the art, have not used composite candy supports. Had it indeed been obvious, other flavors, or types of composite candy sticks would have been needed and used, as well, such as using a Mounds-type Candy Bar in lieu of a Milky Way-type Candy Bar, or the like. Even over the past eighty years and the multitude of available composite candy

bars and ice creams daily available at retail, (even since 1994 of applicant's Disclosure Document) and the more recent volume of newly designed and patented products that have issued, this has not happened.

Time often has a way of telling if something in the field of the art has been obvious or not. Ref. N's patent issued in 1985, having a tubular cookie support filled with a filling. The composite candy bar has been widely available since 1923. From the year 1985 until the year 2000, a period of fifteen years have passed. Since then, manufacturers of frozen supported confections (those having ordinary skill in the art) still have not made frozen confections with the ever familiar composite candy bar that stares everyone in the face at the supermarket checkout lines, where people have to consistently wait. While adding a bit of ice cream, or the like, to an already made composite candy bar, using current technology, would not significantly add to the cost of a newly designed and beneficial confection, the concept of using a composite candy support as a frozen comestible support has just not been obvious.

As was stated in Uniroyal, inc v. Rudkin-Wiley Corp., 5 U.S.P.Q.2d 1434 [C.A.F.C. 1988]. "[w]here prior-art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention

itself.... Something in the prior art must suggest the desirability and thus the obviousness of making the combination."
{emphasis supplied}

Both supported ice cream confections and composite candy bars have been around and easily accessible and widely purchased since the invention of the composite candy bar, or at least by Mars., with the introduction of the Milky Way Bar in 1923, and the Snickers Candy Bar in 1930. These could have easily have been combined, over the past seventy or sixty three years respectively, or the last fifteen, yet have not been combined.

Furthermore, Mar's Milky Way Bar ingredients have even been introduced into half gallons of ice cream by Edy's Brand Ice Cream of Oakland, Ca., by a cooperative effort of a manufacturer of a composite candy bar and a manufacturer of ice cream, those having ordinary skill in the art, but have not thought to introduce the composite candy bar itself to support the ice cream, deeming applicants support unobvious. There has been no prior reason to suggest that a composite candy bar be combined with ice cream to form applicant's invention. A composite candy bar has not been used as a support for anything in the past and there is nothing in the prior art to "suggest the desirability" (Uniroyal, inc v. Rudkin-Wiley Corp., above) that such a combination be made.

Existing prior art candy supports, single element sugar sticks, are delicate and do not have the stamina of a composite candy bar, such as the examples of "Snickers" (Mars, Inc.) Or "Baby Ruth," or 100 Grand (Nestle USA, Inc.) candy bar, used as a support, as the applicant intends. Incorporated nuts, fruits, rice, and other comestibles, surrounded with candy, layered with candy, or configured with candy, constructs a very sturdy, dependable support, that even an unknowing child can grab with a fist without breaking.

Applicant's composite candy support also delivers a variety of tastes, and if desired, textures within the support, a special treat for the consumer and also adds a second dessert when the supported comestible has been consumed. My composite supports are amenable to a large variety of shapes, sizes, color, combinations of candy and other edible members, etc., to accommodate children's tastes, hands, and imaginations, and the ability to pair the theme, and tastes of the supported comestible to the support for a festive party, unlike Ref. N.. Applicants composite candy support when frozen, is frozen deeply from within and keeps the supported ice, ice cream, frozen pudding, etc. colder so that it does not drip as quickly as those supported on a wooden, plastic, or simple sugar stick. This is a notably beneficial attribute for a consumer, especially for a child. Therefore, applicant submits that her new composite candy supports for supporting a frozen comestible are truly novel over the prior

art, have many advantageous novel features that flow from its novel ingredients and structure, are greatly advantageous, and are not obvious.

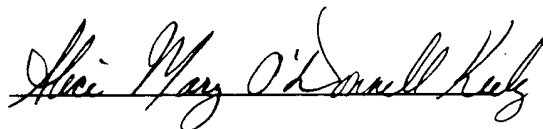
For all the reasons given above, applicant respectfully submits that the ambiguity noted has been corrected by rewriting the claims and that the claims comply with Section 112. The claims now define over the prior art under Section 102, and the newly claimed distinctions are of patentable merit under Section 103.

Accordingly, applicant submits that this application is now in full condition for allowance, which action applicant respectfully solicits.

No new matter has been entered by way of amending the claims and specification, other than the prior art references of the Office Action, above, submitted for a more complete disclosure.

If for any reason this application is not believed to be in full condition for allowance, applicant respectfully requests the constructive assistance and suggestions of the Examiner pursuant to M.P.E.P. Section 706.03(d) and Section 707.07(j) in order that the undersigned can place this application in allowable condition as soon as possible and without the need for further proceedings.

Very Respectfully,



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Certificate of Mailing: I certify that on the date below, this document and referenced attachments, if any, will be deposited with the U.S. Postal Service as first class mail in an envelope addressed to "Assistant Commissioner for Patents" Washington D.C. 20231.

2003 August 18



Alice Mary O'Donnell Kiely

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